

**City of Taylorsville
Planning Commission Meeting Minutes
February 13, 2018
Work Session – 6:00 p.m.
Regular Session – 7:00 p.m.
2600 West Taylorsville Blvd – Council Chambers**

Attendance:

Planning Commission

Lynette Wendel, Chair (Excused)
John Warnas, Vice Chair
Don Quigley
Anna Barbieri
Richard Morley
Kent Burggraaf
Justin Peterson

City Staff

Mark McGrath – Director of Community Development
Angela Price – Associate Planner
Amanda Roman – Associate Planner
Stephanie Shelman – Deputy City Attorney
Jean Gallegos – Admin Assistant/Recorder

PUBLIC: Beth Carr, Matthew Carr, Susan Hull, Rilee Galvez, Sarah Galvez, Carolin Carter, Dan Shoell, Tracy Daley, David Young, Daveline Winter, Phil Daley, Teresa Martinez

WELCOME: 7:04:49 **Commissioner Warnas** assumed duties as Chair, explained the Consent Agenda process and opened the meeting at 7:00 p.m. He then went over the procedures to be followed this evening.

1. The briefing session to review the agenda was conducted by Mr. McGrath from 6:00 p.m. to 7:00 p.m.

CONSENT AGENDA

2. Review/approval of Minutes for December 12, 2017.

MOTION: **Commissioner Quigley** – I will make a motion to approve the Consent Agenda consisting of the Minutes for December 12, 2017.

SECOND: **Commissioner Morley**

VOTE: All Commissioners present voted in favor. Motion passes unanimously. (Add exception because new commissioners were not present during that meeting).

CONDITIONAL USES

3. 1C18 - Consideration of a Class D Home Occupation/Residential Daycare Conditional Use Permit for Susan Hull – 6498 South Appomattox Way. (Amanda Roman/Associate Planner).

3.1 **Ms. Roman** presented this item. She showed images and maps of the area. 7:05 She explained that Susan Hull is requesting approval to operate a Class D Home Occupation at 6498 West Appomattox Way in Taylorsville, Utah. The proposed business is a residential day care with the applicant intending to provide care for up to nine children under the age of six, including her own children. Taylorsville City Code provides that a residential day care may have up to twelve children under the age of six at any one time, including the provider's own children. State law requires a second provider be present if eight or more children are receiving care at one time. She provided a summary of the number of children and their ages in the home presently, which totals out to twelve. She advised the applicant occupies the top unit of the dwelling with her seven children and the downstairs unit is occupied by her cousin and her five children, who are all under the age of six. The property is currently zoned "Single Family Residential R-1-10" which allows a single family to occupy a single dwelling. Taylorsville City has no records of dividing the single-family dwelling into two units as described by the applicant. Staff requested the applicant search the County archives for information that would deem the duplex legal but she could not find any such information. The rental agency said the home was purchased as a duplex. The downstairs unit can be entered through an outside exit or through interior stairs. According to the definition in Taylorsville City Code, this household meets the family definition (Section 13.36.070). The house remains out of compliance because the occupants of the home do not share a common living, sleeping, cooking and eating facility; and the structure has been converted to a two-unit home without City approval. Before a conditional use permit or business license may be granted, the property must be brought into compliance with all City Codes and Ordinances. Section 5.0.110 of the City Code states, "No license shall be issued for the conduct of any business, and no permit shall be issued if the premises and building use do not fully comply with the City's building and land use ordinances." **Ms. Roman** advised that she has received comments from two property owners who were in opposition to this application for the following reasons: Children were not supervised, two families are living in the home, children were allowed to enter the road by themselves and the backyard is not maintained.

3.2 **FINDINGS OF FACT:**

- 3.2.1 The applicant is requesting approval to operate a Class D home occupation (residential day care) at 6498 West Appomattox Way.
- 3.2.2 The subject property is within the R-1-10 zoning district.
- 3.2.3. A home occupation in the R-1-10 zoning district requires an Administrative Conditional Use review (13.07.020.B).
- 3.2.4. The Taylorsville Community Development Director has reviewed the application and has determined it is in the best interest of the City and its residents that the application be presented to the Planning Commission in a public hearing.
- 3.2.5. A residential day care provider may provide care for up to twelve (12) children under the age of six (6) at any one time (13.36.050)
- 3.2.6. The proposed number of children receiving care at one time under the age of six (6) is nine (9), with twelve (12) total children living at the home.
- 3.2.7. The existing fencing on the property does not meet the minimum standards as outlined in 13.11.040.H2(c)
- 3.2.8. The single-family structure has been converted to a two-unit dwelling without City approval.
- 3.2.9. A duplex dwelling is not permitted in the R-1-10 zoning district (13.07.020.B).
- 3.2.10. No license shall be issued for the conduct of any business, and no permit shall be issued if the premises and building use do not fully comply with the City's building and land use ordinances. (50-08-110)
- 3.2.11. A public notice was mailed to all property owners within 300 feet of the subject property.
- 3.2.12. Staff received comments from two (2) property owners and residents; both of which were in opposition of this application.
- 3.2.13. The General Plan Map designation for the subject property is "Low Density Residential".

3.3 **STAFF RECOMMENDATION:** Staff recommends denial of this application based on the Findings of Fact and information provided in the Staff Report.

3.4 **DISCUSSION:** **Commissioner Quigley** asked for clarification relative to if the children that the applicant is planning on watching in addition to her own are blood relatives, would there be a need for a business license, to which **Ms. Roman** stated a City license would not be needed in that instance. **Commissioner Quigley** then said the applicant is asking for a permit to run a day care when she seemingly really does not need it, which **Ms. Roman** affirmed was correct. **Commissioner Quigley** said if they are blood relatives, it does not matter if they live there or not, which **Ms. Roman** also said was correct. However, if she brings children in that are not relatives, she would need a license. **Commissioner Quigley** said at this point she is not contemplating having any children under her care who are non-familial. **Commissioner Barbieri** offered that there is a ruling that if someone wants to be approved for State funded day care, then there must be a State of Utah license, whether or not the children are relatives. **Ms. Roman** advised that she was sure that the number of children is eight to require a second provider and the applicant has nine. She added that she was not sure what the State requirement was in that instance. **Commissioner Barggraaf** added that is probably why it needs to be brought up as potential motivation to get a license even through it is watching relatives. 7:15:37

3.5 **APPLICANT ADDRESS:** **Susan Hull** 7:16:04 stated that she was not certain at this point which children she would be caring for. If she did bring in outside kids she (referring to her cousin who lives downstairs) and her children would not be there anyway. She asserted that she would not go over her limit as to the number of children she would care for and would keep it at eight. She addressed the issue the neighbors had of the children not being watched by saying that she is aware that to do day care, the children must be in sight at all times. **Commissioner Quigley** asked Ms. Hull to clarify if she is making this application because she is planning on starting a day care business and planning on having children other than family members included. She replied that she doesn't know who will be coming yet because it is still in the planning stages, but there is the potential to have non-family members coming. She added that she would offer the service to her cousin first. **Commissioner Quigley** then asked if she were to just watch family members was there an issue in that having a license would facilitate some type of State funding. She said she was aware of that. **Commissioner Quigley** asked if that was the reason she was applying for a business license rather than just watching children who are family members. **Ms. Hull** said that was correct. **Commissioner Barggraaf** commented that Staff made a finding regarding the fence not being 6 feet tall and asked **Ms. Hull** if she planned to dispute that finding. She advised that she was aware that the fence needs to be 6 feet high and would fix that if approved for the day care.

3.6 **SPEAKING:**

- 3.6.1 **Kathy Cox** spoke, giving her concerns about the day care. 7:20:04. She said that she has witnessed several children in the yard on numerous times with no adults supervising them. That the children had been fighting, crying and otherwise in distress. She indicated that it concerned her so much that she had taken it upon herself to go over and talk with the applicant about her lack of care for these children.
- 3.6.2 **Teresa Martinez** wanted to know how many day care businesses are already in the area and if there was some sort of cap on how many were allowed. She also had questions on how many children there were and if they were being supervised. She was very concerned about the safety of these children. Staff could not answer Ms. Martinez' questions. **Commissioner Quigley** asked her if with the onset of the number of day cares within the neighborhood had she noticed an increase in traffic, to which she replied that she had. 7:23:37.

- 3.7 At this point, **Commissioner Warnas** closed the public hearing and opened up the meeting for discussion amongst the Commissioners.

3.8 **DISCUSSION:**

3.8.1 **Commissioner Barbieri** said that she sees two different issues with this. Number one is that the house itself is out of compliance and Taylorsville does not grant permits such as this when the home is turned illegally into a duplex. Secondly, on the issue in general with neighborhood businesses such as day care, home occupations, etc., the whole idea is to be able to keep the feel of a neighborhood and maintain the sense of family, safety, a place for living rather than a commercial place. Therefore, based upon neighbor's comments, the sense of community has been lost and there is a sense of a business next door. In her estimation this would probably be two reasons why she would not vote to approve this request for permit.

3.8.2 **Commissioner Quigley** said he supported Commissioner Barbieri's comments and added the "cart before the horse" characterization wherein he felt it would be difficult for him to approve an applicant when they are not in the current situation and where they base it on the future promise of compliance with Code. There are some specific issues involved in this that would be difficult – one being the conversion of the house already into a multi-family structure and the fence. He felt the issue was that perhaps the applicant is premature in making her application, particularly in view of the fact that the welfare of the children is of utmost concern, with specific regard to the condition of the yard and the perceived lack of care of the children already in the home. His opposition was based on the fact that she needs to demonstrate compliance before she applies for the permit.

3.8.3 **Commissioner Burggraaf** expressed his opinion that he felt the permit at this time should be denied on grounds that wouldn't be interpreted as arbitrary in anyway and therefore, needs to be on the grounds outlined in the City Code. The fence is not in compliance and felt that was the strongest grounds for which this should not be approved. As far as the community well-being or safety of children factor, those are not conditions clearly outlined in the ordinance. It is a circumstance that the Commission can look to mitigate with additional circumstances but in reality, were the Commission to consider any land use decision based on how someone takes care of their own children is not proper grounds for doing it. The non-compliance issue is not that it is definitively a duplex so he suggested in the denial that the finding not incorporate the specific finding calling it a duplex in that the facts are not clear in that regard. What is known is that there is no evidence of it not being in compliance. Therefore, that is the finding that should be adopted related to this specific application. When it comes to a motion, his recommendation was that the Findings be adopted as made by Staff with the exception of the duplex finding (which he felt was not needed) as well the finding that specifically refers to the other property owners who have made comments. While the property owners have made comments, when it is relevant to specific conditions are good to hear but comments that don't speak specifically to the conditions outlined in the ordinance could be interpreted as "public clamor" which is actually not a needed Finding for the purpose of making a decision, so he suggested that specific Finding not be adopted either. To be clear, he was referencing the Finding that Staff received comments from two property owners. What is essential for the ordinance is that Staff did send notices out. 7:28

- 3.9. **MOTION: Commissioner Burggraaf – I move that we deny the application for the conditional use permit to operate a residential day care at 6498 West Appomattox Way based on the Findings of Fact included in the Staff Report, with the exclusion of the Finding relating to a duplex dwelling and the Finding of the number of comments received from the public. 7:31**

SECOND: Commissioner Morley

VOTE: All Commissioners present voted in favor. Motion to deny passes unanimously.

4. 2C18 – Consideration of a Class D Home Occupation/Residential Daycare Conditional Use Permit for Carolin Carter – 1556 West Allegheny Drive. (Amanda Roman/Associate Planner).

- 4.1 **Ms. Roman** presented this application. 7:33 She showed maps and images of the site and explained that the day care would not involve the downstairs occupant except for yard sharing. That the applicant Carolin Carter is requesting approval to operate a Class D home occupation at 1556 West Allegheny Drive in Taylorsville. The proposed business is a residential day care and the applicant intends to provide care for up to twelve (12) children, including her own children. The applicant occupies the top unit with her nine children. The downstairs unit is occupied by a family with two children under the age of six. The second family will not be participating in the day care, however, for the purpose of this application, Staff must count all children living in the home because they share a back-yard play area. The property is currently zoned "Single Family Residential R-1-8" which allows a single family to occupy a single dwelling. Taylorsville City has no records of dividing the single-family dwelling into two units as described by the applicant. On February 14, 2017, the Planning Commission denied a request for a day care at this same residence. At that hearing there were sixteen public comments in opposition of the application. This is a different applicant tonight but the home is still not in compliance with City Code. A public notice was mailed to surrounding neighbors with numerous complaints having been received in opposition, which **Ms. Roman** reviewed before the Commission.

4.2 **FINDINGS OF FACT:**

- 4.2.1 The applicant is requesting approval to operate a Class D home occupation (residential day care) at 1556 West Allegheny Drive.
- 4.2.2 The subject property is within the R-1-10 zoning district.

- 4.2.3 A home occupation in the R-1-10 zoning district requires Administrative Conditional Use review (13.07.020.B).
 - 4.2.4 The Taylorsville Community Development Director has reviewed the application and has determined it is in the best interest of the City and its residents that the application be presented to the Planning Commission in a public hearing.
 - 4.2.5 A residential day care provider may provide care for up to twelve children under the age of six at any one time (13.36.050)
 - 4.2.6 The proposed number of children receiving care at one time under the age of six is six with eleven total children living at the home.
 - 4.2.7 The existing fencing on the property does not meet the minimum standards as outlined 13.11.040.H2(c).
 - 4.2.8 The single-family structure has been converted to a two-unit dwelling without City approval.
 - 4.2.9 A duplex dwelling is not permitted in the R-1-10 zoning district (13.07.020.B).
 - 4.2.10 No license shall be issued for the conduct of any business, and no permit shall be issued if the premises and building use do not fully comply with the City's building and land use ordinances. (5-08-110)
 - 4.2.11 A public notice was mailed to all property owners within 300 feet of the subject property.
 - 4.2.12 Staff received comments from six property owners and residents; all but one of which were in opposition of this application.
 - 4.2.13 Staff received comments from neighborhood residents concerning the business would bring additional noise and traffic than would otherwise be expected in a residential neighborhood.
 - 4.2.14 The General Plan Map designation for the subject property is "Low Density Residential".
- 4.3 **STAFF RECOMMENDATION:** Staff recommends the Planning Commission deny File #2C18 based on the Findings of Fact and information provided in the Staff Report.
- 4.2 **APPLICANT ADDRESS:** Ms. Carolin Carter was present and advised she was making application to do home day care. That more than half of the children would be in school during the time. Therefore, she is asking to do the maximum eventually. She desires to do this to earn income wherein she can be home with her children. Addressing some of the comments, she said that she does allow her school age children to play outside, however, she can see them from her house window on that side. Otherwise she goes outside with them. She did not feel this would impact the number of people in the home at any one time because her school age children would not be home at the same time. That she is presently working full time but wants to be able to stay home and be a full-time mother. Regarding the yard not being maintained, she was not sure what was meant by that and felt that it was a personal problem aired by one particular neighbor. As far as people not wanting to have a day care in their neighborhood, some of the children would be her own and would just be additional children in place of her children who are in school all day.
- 4.2.1 **Commissioner Quigley** asked about the occupant downstairs and wanted to know if they were family or a rental tenant. Ms. Carter replied that there had been family in the past living there and have recently rented it out to a friend of the family on a month-to-month basis. The access to the basement is locked to give them their privacy. **Commissioner Quigley** asked if she was familiar with the City's ancillary apartment code requirements and she replied she was not. **Commissioner Quigley** said she had described that apartment as ancillary, where there is a tenant living within the house in the basement and it typically requires a permit as well. Basement apartments cannot be rented out to a non-family member without an ancillary unit permit in order to do so. He was just trying to clarify the relationship between Ms. Carter and the tenant downstairs. Ms. Carter said that the tenant is related to them but not closely. That she is her cousin but there is not a lot of interaction. Ms. Carter then asked if there needed to be a permit to have family live with them. **Commissioner Quigley** said that not with family but that she had said earlier that they were not family. Ms. Carter said that she is her cousin.
- 4.2.2 **Commissioner Burggraaf** said as far if she needs an accessory apartment permit is something she should contact Taylorsville Staff for clarification, especially if she is collecting rent with a formal agreement. When they are looking at the permit, they took a couple of photographs of the property and one included trash/debris, which seemed to be minimal and not a major issue for compliance. They also took a picture of the back fence, a portion of which looked like it needed some maintenance and also did not look like it was six feet tall as required. He asked if she disputed the fact that the chain link fence is not six feet in height. Ms. Carter said that she had not measured it but behind the chain link fence there is another fence in place that is higher. **Commissioner Burggraaf** said that there looked to be about a 12 foot fence on part of it and maybe what appeared to be a four foot fence through the rest of it. Ms. Roman explained that the side neighborhood has erected a 12 foot high fence and the neighbor in the rear has erected a six foot high fence in back of Ms. Carter's chain link fence. **Commissioner Burggraaf** asked if that complies with the six foot high requirement. Ms. Roman said that it did.
- 4.2.3 **Commissioner Barbieri** asked Ms. Carter if she was the owner of the home and she replied that her name was not on the deed but that they did own the home. **Commissioner Barbieri** then wanted to know if she was renting out the basement. Ms. Carter said that was correct. **Commissioner Barbieri** asked how long she had been living there and Ms. Carter said about seven years.
- 4.2.4 **Commissioner Peterson** said it was difficult to ascertain from the pictures provided if the back yard was fully fenced and Ms. Roman said that it was.

- 4.2.5 **Commissioner Quigley** asked Ms. Carter if she was saying that she was not the “legal” owner but was the owner. Not the owner of record in that her name is not on the title of the property. **Ms. Carter** said that was correct. **Commissioner Quigley** added then that she is not the owner legally. **Ms. Carter** said that was correct. 7:48.

4.3 **SPEAKING:**

- 4.3.1 **Theresa Martinez** - Was not in favor of adding another day care in this area, as being too many and said that it would end up increasing traffic immensely. Also, she was concerned that the applicant had changed her answers a couple of times, especially about being the owner of the home or not and if the person living in her basement was a relative or not. 7:51. In summary, she advised that she does not want any more businesses in a residential area. **Commissioner Quigley** advised that he appreciated Ms. Martinez’ comments but that sometimes people are not being deceitful but just don’t understand what the definition is of a certain thing. His choice was to give people the benefit of the doubt when definitions of Code are involved.

- 4.4 There being no others wishing to speak, **Commissioner Warnas** closed the public hearing and opened it for discussion amongst the Commissioners.

- 4.4.1 **Commissioner Quigley** asked if the ordinance requires the person to be the property owner and **Mr. McGrath** stated that for a business license it does not mandate that. For an accessory dwelling unit, the main unit must be owner-occupied. However, for a business license or day care the requirement exists that the property owner provides written permission for the business activity to take place on their property, but it is not required that the applicant is the property owner. **Commissioner Quigley** asked if in this application the property owner provided that permission. **Ms. Roman** indicated that Ms. Carter had obtained that permission. 7:52.

- 4.4.2 **Commissioner Morley** said that as he was reviewing this application and since he lives in this neighborhood, he knew of two other day cares in existence, so this would be four (including the one previously heard this evening) and wondered if that was over populating the day cares in that particular neighborhood. He felt that was a problem because right next to those two neighborhoods, they are building a 65-unit condominium project which is going to increase the traffic. He felt that if they are not in compliance with the existing ordinances then perhaps it should be required that happens first and have them come back.

- 4.4.3 **Commissioner Burggraaf** agreed with that comment, being that compliance was “cart before the horse”. His suggestion was that there seemed to be a little ambiguity involved with the fence issue, so at the time the motion is made he suggested that be eliminated as one of the Findings to be adopted and similar to the prior issue, he felt that the Finding pertaining to the duplex dwelling in the sense that it is not specifically determined that it is a duplex as much as a non-conforming structure/use also be eliminated. It is clear that this applicant is not in compliance with the City ordinance, which is mentioned in other Findings. **Commissioner Burggraaf** also suggested that the Findings adopted would exclude the actual comments received (#12 and #13) in the Staff Report the Commission received. If a notice was provided, it is important for Staff to investigate allegations pertaining to conditions that are required but it is not essential and might be considered improper for the Commission as a Board to adopt those Findings as a basis for the decision. He added that he did believe that based on the non-compliance with the City Ordinance that the applicant as this time should be denied. **Mr. McGrath** asked for clarification on Commissioner Burggraaf’s concern over the consideration of the structure being a duplex. **Commissioner Burggraaf** 7:56 explained that he was not sure that it is completely clear that it is a duplex versus not, although the comment by the applicant makes it more clear in the sense that there is not an owner occupying the main portion. He did not feel that Finding is essential in this matter and the comments by the applicant could be construed that it is just an accessory unit that has not received a permit and so as opposed to making a Finding that may not be concrete he felt it was more appropriate to leave it out. Remaining Findings sufficiently lay a basis for a decision. As pertaining to his comment to the prior applicant, it is not clear that it is a duplex and therefore violating the zone being a non-permitted use. It might be, but he preferred to base the decision on a concrete Finding rather than one that might have some ambiguity to it. **Mr. McGrath** read the definition of a duplex from the Code which said 7:57:06 “A building designed or arranged to be occupied by two families living independently, the structure only having two dwelling units in one ownership.” So, he saw that this building had been arranged to be occupied by two families. The two families are living independently and the structure has one ownership. **Commissioner Burggraaf** asked if that was not similar to the context of facts that would fit an accessory apartment, except that accessory units have additional criteria. **Mr. McGrath** said that he did not believe so. **Commissioner Burggraaf** asked what the distinction here was that makes it a duplex. **Mr. McGrath** said that they are independent and have facilities in both units that would allow them not to be able to interact with each other. **Commissioner Burggraaf** said that there is a door between them that is locked. He continued on to say the fact that because there is debate regarding this, is where the ambiguity sits. If it is not used as a Finding there would be no reason to incorporate an ambiguous Finding as a basis for decision. **Mr. McGrath** suggested the Commission move on with this but expressed that he disagreed with Commissioner Burggraaf on this and felt it was clear from the information provided by Staff and the testimony heard this evening that this does meet the City’s definition for a duplex. **Commissioner**

Burggraaf followed that up by asking if the applicant can establish that she is the owner or they do purchase the property, if they were to come in and apply for an accessory apartment permit assuming that it meets the other criteria for an accessory apartment, namely two bedrooms or less, less than 30% of the square footage of the home and it is 800 square feet or less, which information is not available – they could be granted an accessory apartment permit. **Mr. McGrath** answered that was potentially possible. **Commissioner Burggraaf** then asked why would this be called a duplex if they could get that accessory apartment permit. **Mr. McGrath** advised that he did not understand why that element matters in this decision. **Commissioner Burggraaf** said that it does because of the definition that is included in the Findings. It is ambiguous whether it actually is a duplex when they could get an accessory apartment permit. 7:59:55

- 4.4.4 **Commissioner Quigley** said that while he valued Commissioner Burggraaf's expertise and background, he did not view him as the attorney for the Planning Commission. He thanked him for his suggestions and comments and felt those should be taken under advisement. However, that the Planning Commission is not a traditional body in the sense of legal expertise but rather a citizen's board appointed by the Mayor of Taylorsville. 8:00. He said that he would like to make a motion at this time rather than perpetrating further debate as to what a legal opinion is and felt there was a sufficiency of other reasons to deny this
- 4.5 **MOTION: 8:00 Commissioner Quigley – I would like to make a simple motion that we deny File #2C18 for a conditional use permit to operate a residential child day care at 1556 West Allegheny Drive based on the Findings of Fact and information in the Staff Report.**
SECOND: Commissioner Barbieri
VOTE: Commissioner Barbieri – AYE, Commissioner Morley – AYE, Commissioner Quigley – AYE, Commissioner Peterson – AYE, Commissioner Burggraaf – NAY. Motion passes with 4 in favor and 1 in opposition.

5. 3C18 – Consideration of a Conditional Use Hobby Permit for Three Dogs for Matthew Carr – 6095 South Sierra Grande Drive. (Amanda Roman/Associate Planner). 8:03

- 5.1 **Ms. Roman** presented this item saying that Matthew Carr applied for a conditional use animal hobby permit to allow three (3) dogs at his residence. The application is for a 2.5 year old male Chihuahua that he took in after his father passed away. The dog has been sterilized and vaccinated. The applicant already has two Pitbull mixes who are also sterilized, vaccinated and licensed with the City. The Community Development Director decided to take this application to the Planning Commission after Staff received multiple comments in opposition of the hobby permit. Most of the comments were not about these specific dogs, just the neighborhood dogs in general. No comments were made concerning the Chihuahua on the application. The comments in opposition dealt with the Pitbulls having previously been out of the yard because there was no fence when the owner moved in and which subsequently has been installed. Another problem of note was that there had been a pile of wood stacked against the fence which allowed escape access for the dogs, which has since been removed. **Commissioner Burggraaf** asked if the third dog had been licensed and **Ms. Roman** said it had not, the reason being they were awaiting the decision tonight.
- 5.2 **FINDINGS OF FACT:**
- 5.2.1 This Conditional Use Hobby Permit application was initiated by Matthew Carr.
 - 5.2.2 The applicant's father recently passed away and he took in his dog, a 2.5 year old male Chihuahua.
 - 5.2.3 The applicant already has two (2) Pitbull mixes and the hobby permit would allow him to keep all three (3) dogs.
 - 5.2.4 West Valley Animal Control has stated that there has been a complaint over the two Pitbulls escaping the yard. They issued a warning to the applicant, and have no issues approving this permit.
 - 5.2.5 The City of Taylorsville received eight total comments concerning this application, seven were made in opposition and one was asking questions but was not opposed.
 - 5.2.6 The dogs are vaccinated; the two Pitbull mixes are licensed and all are spayed/neutered.
 - 5.2.7 The Director has not approved the request, and West Valley Animal Services does not have any issues with approving this permit.
- 5.3 **STAFF RECOMMENDATION:** Staff recommends that the Planning Commission considers all the information in the Staff Report along with any testimony offered during the public hearing and render a decision they deem appropriate. If the Planning Commission chooses to approve the permit, Staff recommends the following conditions:
- 5.3.1 The purpose of this permit is to authorize West Valley Animal Services to license three dogs. It is recommended that the Conditional Use Permit will not go into effect nor be recognized by the City until proof of licensure is submitted.
 - 5.3.2 Only the dogs listed in the application are allowed. If one (1) of the dogs listed in this application dies, a new application will be required if that dog is replaced.

- 5.3.3 That the applicant abides by all rules for maintenance of the Conditional Use Permit as found in Chapter 13.33 of the Taylorsville City Code.
- 5.3.4 If there are any substantial nuisance claims, the Conditional Use Permit may be revoked.
- 5.3.5 The applicant must remain compliant with all approval agencies.
- 5.2 **APPLICANT ADDRESS:** Matthew Carr was present and reiterated the reason he was now caring for the Chihuahua. Commissioner Quigley said that he understood the situation and the emotional connection but wanted to make sure the value of the neighborhood was assured by keeping the dogs contained on his property. Other than that, he had no concern with approving this request. 8:13.
- 5.3 **SPEAKING:** Commissioner Warnas opened the public hearing and no one came forward to speak either in opposition or in favor, therefore, he closed the public hearing and opened it for discussion by the Commission. There being no further discussion, Commissioner Warnas asked for a motion.
- 5.4 **MOTION:** Commissioner Quigley 8:14 – I move for approval of File #3C18, conditional use hobby permit for three dogs, based on the Findings of Fact in the Staff Report and with conformity with all ordinances and licensing requirements.
SECOND: Commissioner Morley.
DISCUSSION: Commissioner Burggraaf – I agree with the sentiment of the motion. At some point we need to address the actual statute and ordinance in place in that it also requires that there be approvals from the Health Department and the Director. This has been referred to the Commission by the Director, so at some point that ordinance needs to be addressed because we are not requiring those two conditions under these current circumstances. Mr. McGrath added for clarification that the Animal Hobby Permits are identified in Chapter 8, which is the Animal Control Ordinance and the definition of “Director” in Chapter 8 is the Director of West Valley Animal Control rather than him in this particular case. Commissioner Burggraaf – Thank you for that clarification. Commissioner Warnas – So we have a motion by Commissioner Quigley and a Second by Commissioner Morley. I will ask for a vote on the motion.
VOTE: Commissioner Barbieri – AYE, Commissioner Morley – AYE, Commissioner Quigley – AYE, Commissioner Peterson – AYE, Commissioner Burggraaf – AYE. Motion passes unanimously.

TEXT AMENDMENTS

6. 16Z17 – Tracy Daley – Recommendation to the City Council for a Zoning Text Amendment to the Taylorsville Land Development Code, Section 13.11.010(C)(2) Updating Accessory Apartment Standards. (Amanda Roman/Associate Planner). 8:16.

- 6.1 **Ms. Roman** presented this item. The applicant, Tracy Daley, built a home in Taylorsville with the intent of renting out the basement as an accessory apartment. After the home was built, the applicant came to the City and applied for a Conditional Use Permit for an Accessory Apartment.
- 6.1.1 In 2012, Taylorsville City Council approved the first accessory apartment ordinance. The ordinance allowed accessory apartments to comprise no more than 50% of the building's total floor area nor be greater than 800 square feet in size. In 2014, the Code was amended to allow no more than 30% of the building's total floor area, reflecting that the use must be clearly subordinate to the single-family residence. The proposed zoning text amendment would increase the allowable maximum size of the accessory apartment, but maintains that the home must retain its single-family dwelling appearance, the use be subordinate and comprise no more than thirty percent (30%) of the building's total floor area.
- 6.1.2 The Conditional Use Permit was denied based on the fact that the accessory apartment surpassed the allowed maximum square footage stated in the Taylorsville Land Development Code. The applicant is requesting a text amendment to the Taylorsville Land Development Code 13.11.010(C)(2) to increase the allowable square footage of an accessory apartment from a maximum of 800 square feet to a maximum of 900 square feet. A text amendment to the Taylorsville Land Development Code must be approved or denied by the City Council.
- 6.1.3 This application was originally heard at the December 12, 2017 Planning Commission meeting where the Commission voted to table the application until further information was provided. At the January 23, 2018 Planning Commission work session, the Staff and Commission heard from Tara Rollins, the Director of the Utah Housing Collation. She provided statistics on Utah's available housing inventory, and the people who need affordable housing the most. Her presentation showcased police officers, retail workers, teachers and day care providers as examples of people who make lower salaries, thus may not be able to afford what is currently available in the housing market. The Planning Commission and Staff also had a conversation about accessory apartments and what size is appropriate for the City. The discussion concluded with asking the Planning Commission to think about what Taylorsville can do to provide housing for Utah's growing population, and if that solution is allowing larger accessory apartments or other forms of housing.

6.2 **FINDINGS OF FACT:**

- 6.2.1 This application was initiated by Taylorsville resident Tracy Dailey.
- 6.2.2 The text amendment is to the Taylorsville Land Development Code, Section 13.11.010(C)(2)
- 6.2.3 The proposal increases the maximum size of an accessory apartment from 800 square feet to 900 square feet.
- 6.2.4 A text amendment to the Taylorsville Land Development Code must be approved or denied by the City Council.

6.3 **STAFF RECOMMENDATION:** Staff recommends that the Planning Commission considers all information contained in the Staff Report along with any testimony offered during the public hearing and render a decision deemed appropriate.

6.4 **APPLICANT ADDRESS: Tracy Dailey** 8:23. She questioned the figures and thought that in 2012 it was 50% and 1200 square feet. **Mr. McGrath** said that he would have to go back and check on that. **Ms. Dailey** said that was creating a duplex style in the home. They solved that problem saying that 1200 square feet is too big and went back to 800 square feet, which equates to a one third decrease. At that time, it was understandable because there was a problem. She is now proposing to increase that to 900 square feet in order to attract higher quality renters. That in Taylorsville and in fact the whole valley, two-bedroom apartments that are under 800 square feet are in some of the worst apartment complexes and makes it more difficult to get higher income renters. She felt it would be good for the City of Taylorsville to increase it to 900 square feet because it gives home owners access to about 20% of the rental market and right now it is limited to less than 9% of the rental market in homes. She would like to be able to be available to a little more of the rental market and that is the reason for the request to increase to 900 square feet.

6.4.1 **Commissioner Burggraaf** said that the ordinance change would affect the whole City but wanted to know what the square footage of her home was including the accessory apartment and she said it was 5,700 square feet. That the apartment there is 875 square feet, which makes it under the 30%.

6.4.2 **Commissioner Peterson** wanted to know where she was in the process now. That it sounded like she had hired an architect but nothing has been constructed yet. **Ms. Dailey** said that in 2015 they applied and the plans were turned into the City for a finished basement. In May of 2017, they E-mailed the City with the intent of having a mother-in-law apartment for future use, but until that use was needed, they planned to rent out their basement. She forwarded that to the architect and it was not followed through on, which they were not aware of until they moved in and went to rent that apartment out. At that time, Ms. Dailey went to the City to make sure everything was okay to do that. She knew at that time that they had not signed an affidavit as being the home owners. She reiterated that she was certain that having this apartment would not change the look of the house to be anything other than a single-family dwelling. When she came into the City offices in August 2017 to sign that affidavit she found out that the process had not been done correctly. **Commissioner Peterson** wanted to clarify that the accessory apartment has been constructed then and was informed by **Ms. Dailey** that it had.

6.4.3 **Commissioner Burggraaf** asked if this change does not go through did she have a mechanism in place for walling off 75 square feet of the apartment. **Ms. Dailey** said that they would do everything they can to not do that because it was built with high quality in mind. Any kind of wall would create an un-liveable space and there would be no living room. That would not be the kind of atmosphere for anyone to live in. They have thought about making it a one bedroom and have literally tried to think of every avenue to make this legal without having to make it an un-liveable space.

6.4.4 **Commissioner Morley** asked her if when she originally planned this it was to be a mother-in-law apartment and she said that she was not clear on the exact difference in definitions. They thought that someday they should be prepared to take care of their parents sometime in the future but until then they could rent it out to help pay their mortgage. That has always been their plan to be able to legally rent it until a family member needed to move in. **Commissioner Morley** stated that it was built as a mother-in-law apartment and afterwards the owner decided to make it a rental unit then. **Ms. Dailey** stated those were the intended options. They wanted to build it so that it would be in compliance with City ordinances for both types of units. She was unsure of what the difference is between the two in the City ordinance. **Commissioner Morley** asked Mr. McGrath for clarification on that and **Mr. McGrath** said that they are addressed the same in the ordinance. **Commissioner Morley** asked Ms. Dailey if she had been given the ordinance that stated it could only be 800 square. She said that once they found out that there was a problem they went back through their E-Mails. The plans submitted to the City included a separate entry and they had gone to a City Council member who asked if they could prove that City officials knew they intended to rent out that space. She had found one E-Mail in May where she had said that she had every intention of renting it – to which the response was that she should go through the permit process. They did not know at that point that there was a Code problem because their architect was the one dealing with the City. She added that they did not know about the 800 square foot requirement. **Commissioner Morley** commented that the architect should have known that. 8:33

6.5 **SPEAKING:** No one came forward to speak either in favor or opposition. Since no one came forward, **Commissioner Warnas** closed the public hearing and opened the meeting for discussion by the Planning Commission.

6.6 **DISCUSSION:**

6.6.1 **Commissioner Quigley** (8:36) said it was his opinion that this is not just a single issue. What is done for one is done for all. This situation depicts a home owner who is out of sync with the Code. He felt the 900 square feet might be archaic because 30% of a 4,000 square foot home would be 1,200 square feet, 30% of a 3,500 square foot home would be 1,050. The break point at 900 square feet is a 3,000 square foot home. His point was that

there were not that many 4,000 square foot homes in Taylorsville. They mostly range in the 2,000-3,000 square foot, wherein the 900 square foot figure would fit. However, for the larger homes that are now being built, which doesn't apply to many available lots in Taylorsville because it is pretty well "built out". That makes it restrictive and almost discriminatory that if there is a home that exceeds 3,000 square feet, it still must be held to the standard of 900 square feet. His opinion was that in making a recommendation to the City Council he felt he would rather just focus on the 30% figure as being a reasonable amount. That puts a stop gap for converting it into a duplex, a stop gap of single family homes becoming multi-family homes and renting out the whole basement and building it as such. That 900 square feet is a good footprint for a two-bedroom apartment in the basement of the home would be fair if the home is 3,000 square feet but not a good footprint for a larger square footage home. He felt that instead of returning to this issue in the future and debating that the square footage should be increased gradually with each new application, that a recommendation should be made to the City Council and say 30% is a reasonable number for all home sizes. He did not feel it was necessary to struggle over capping it at 900 square feet and did not feel just going to 30% would affect that many homes in the City anyway.

6.6.2 **Commissioner Morley** said he partially agreed but wanted to know if the 30% referred to the home or whole property square footage. **Mr. McGrath** stipulated that referred to just the home size. **Commissioner Morley** felt that was probably the way to go but expressed concern that this might escalate in allowing homes to be developed into tri-plex units. There are so many rentals in Taylorsville that some type of control needs to be established. **Commissioner Quigley** commented that there are other requirements that must be met in order to get these accessory units approved such as the homes must be owner-occupied, there are parking limitations in place and an outside entrance must be provided. He felt those requirements are more significant than the actual square footage allowed. 8:41

6.6.3 **Commissioner Barbieri** advised that there are many homes in Taylorsville that are over 3,000 square feet. That if it allowed that homes over that size may develop an accessory apartment of 30% then there is the rental faction added which does impact on-street parking. In some neighborhoods there are homes at 4,500 square feet with 30% equaling 1500 square feet and a lot of people can be housed in that much space and involve two or three additional cars. She would like to keep the cap at 800 square feet right now because the housing market is changing so rapidly. She expressed being very sensitive that there are a limited number houses for people of middle or lower income and that is a tough situation. She agreed that there needs to be housing found for people but in Taylorsville there is already a lot of neighborhoods that have been over-run with rental properties and she felt this proposed ordinance change opens the door for even more and thus far the existing problem has not been reined in. She would like to see more studies done on this and did not like the idea of people building a home with the intent of renting 30% of it out when it is zoned for single family dwellings. She felt that would open up a Pandora's Box. She would like to see some of the areas in Taylorsville cleaned up that are already rental problems and create some good living spaces for people that cannot afford the 4,000 – 5,000 square foot homes. She asked that the cap be kept at 800 square feet.

6.6.4 **Commissioner Quigley** addressed Commissioner Barbieri saying that he appreciated her opinion and felt they were on the same page generally. He agreed that he did not like to drive down a street and see so many cars parking on both sides of the street that they limit access. However, he wanted to clarify that as part of the rules in place to get this permit, if there were a restriction as to the number of occupants that can inhabit a home and **Mr. McGrath** said there was not. **Commissioner Quigley** felt that was something then to be considered because in talking about a two-bedroom, then there may need to be a restriction on the number of occupants therein. He then commented that it must be a singular tenant and can't be a "by room" tenant wherein single bedrooms can be rented out separately. **Mr. McGrath** said for the accessory dwelling unit the Code is silent on that issue. **Commissioner Quigley** then said he agreed with Commissioner Barbieri that there are some issues involved that need to be addressed so that Taylorsville doesn't become the "rental capital of the World" but also wanted people to be able to have some type of reasonable standard that if they have the ability to create a rental unit in their basement and rent it out to someone who can justify and reasonably use a two-bedroom apartment, they can do so. He advised that he is still in favor of a 30% factor rather than cutting it off at 900 square feet because that becomes restrictive to somebody owning a larger home. He felt it only fair to have the 30% allowable size for all size homes. The Commission's recommendation to the City Council impacts the whole City and not just this applicant. He did not agree that homes with square footage over 3,000 were in significant numbers throughout the City. He felt that with the restrictions already in place and then possibly with the consideration of putting additional restrictions regarding the number of occupants etc., that a fairer practice would be 30% rather than 900 square feet, with 800 square feet being a step backwards. He did not feel putting a cap on the square footage would impact the quality of life for the neighbors or the impact on the neighborhood. The exception would be if everybody along the street did the same thing and therein is the problem with doing for one means doing for all.

6.6.5 **COMMISSIONER BURGGRAAF** 8:51 agreed with comments made by Commissioner Quigley and felt that logic was sound. There are three different clauses that restrict the layout of these accessory apartments and it seems like it is tripling up on something that does not need that much regulation. The Commission is in the position of trying to balance quality of life along with regulating growth with property rights and it would be great if people could just do what they want with their property, however, the City has a duty to look at those other two things as well. He felt that if the Commission gets rid of the clause that says, "nor be greater than the square footage". That would leave the other two checks – the 30% and two-bedroom allowances. By having that restriction he did not believe that because an accessory apartment is made 1,200 or even 1500 square feet it would change

the amount of cars and people living there. He agreed with the sentiment that the specific square footage issue puts an unnecessary restriction and felt it was discriminatory towards people who have homes that are larger than 2,700 square feet as far as how they fund paying their mortgage and how they will ultimately potentially let family reside there when needed.

- 6.6.6 **Commissioner Morley** said that he was sympathetic to all the Commissioner's comments but having been a general contractor for years and done many remodels and also been an apartment manager for a large complex, he was of the opinion that there would be a lot of abuse of this policy. He felt that what the Commission was trying to do was control that a little bit because when people are allowed to build greater size homes, there is going to be more people per unit. He was not opposed to having the 30% or 900 square foot option because that still gives the City a little flexibility to control some of that. Not to take away the rights of the home owner but he felt the abuse would occur when a home owner builds an accessory apartment for their use and then moves somewhere else. Then the new owner could buy it just for rental use within a rental. He could support leaving the 900 square foot requirement but not support leaving it at 30%.
- 6.6.7 **Commissioner Peterson** asked a question about definition of "Family" saying it was his understanding that the Ordinance clearly defines a family as people who are blood related or three non-related people living in the same dwelling. **Mr. McGrath** said that was correct along with some other stipulations. **Commissioner Peterson** said then that definition applies to the accessory dwelling units as well. **Mr. McGrath** advised that was correct. **Commissioner Peterson** said that would mean that the maximum number of un-related people would be three. **Mr. McGrath** said that was correct for now but would probably evolve to four un-related people per State definition. Therefore, Taylorsville will be changing its definition to four to be consistent with State Code. **Commissioner Peterson** said that the point was that there still is a check to not allow a dozen people living in a 900 square foot space. He felt that the larger size units appeal to people who do not like the idea of raising little kids in an apartment complex. From his personal experience, the homes in his neighborhood who have these accessory units rent out to quality people because they live there as well. They don't want to jeopardize their own safety or peace and quiet just to make a few extra dollars to help pay the mortgage. This is different from people buying homes for the purpose of turning them into rentals and not living there themselves. That is a separate issue. The ordinance as it currently stands is a bit restrictive and doesn't allow for people who can't afford a larger apartment and so they go somewhere else or for people who want that as a supplemental income so they can afford to buy a house. He was in favor of lifting the 900 square foot restriction and keeping it a more percentage base because otherwise it puts an un-due burden on home owners and encourages underground activity wherein people go ahead and do it anyway.
- 6.6.8 **Commissioner Barbieri** said that she agreed with some of those remarks, but disagreed with the comments that the Ordinance is discriminatory.
- 6.6.9 **Commissioner Quigley** said he wanted to underscore two things – number one was that this discussion cannot be sluffed off because of the City's inability to enforce a Code. If the City is not actively looking into these violations of too many people in a home, renting out by the room, then shame on them but that is their job. There needs to be rules and then to have the ability to enforce those rules. The second comment he wanted to make was that there is a huge difference between just being a rental property and being a property that is owner-occupied and the owner lives in the home; the quality of tenant is significant. He had done a lot of property management and managed properties with both scenarios where owners have come to him to rent out their basement but did not want to deal with it. But even though that was said, the control they kept in place as to the quality of tenant and conduct of those tenants, was significantly greater where the owner continues to reside on the property versus the situation where the owner is just renting the entire property as a rental. Tonight the discussion is not about rental properties but instead accessory apartments where the owner is still ever present. That he believes in the owners having enough personal pride and integrity to not let someone run down their property. He also expressed that it is up to the City to enforce the Code.
- 6.7 **MOTION: Commissioner Burggraaf - I would move that we make the following recommendation to the City Council that we amend Taylorsville City Ordinance 13.11.010(C)(2) for accessory apartments, extended living areas and guest houses, specifically paragraph 2 to strike the clause "or be greater than 800 square feet".**
SECOND: Commissioner Quigley
VOTE: Commissioner Burggraaf – AYE, Commissioner Quigley – AYE, Commissioner Peterson – AYE, Commissioner Morley – NAY, Commissioner Barbieri – NAY. Motion passes 3 in favor and 2 in opposition.

7. 1Z18 – Recommendation to the City Council for a Text Amendment to the Taylorsville Municipal Code, Regarding appeal Authority. (Mark McGrath/Director of Community Development)

- 7.1 **Mr. McGrath** presented this item. 9:05.
- 7.1.1 **Mr. McGrath** said that this amendment to the Taylorsville City Code would identify a "hearing Officer" as the Appeal Authority for requests for variances and appeals from the provisions of the Taylorsville Land Development Code. The Hearings Officer would replace the current five-member Board of Adjustments. Background for this request is that State Code requires that any municipality that adopts a land use ordinance also appoints an "Appeal Authority" to hear requests for variances and appeals to the provisions of the ordinance. The state law

gives municipalities discretion regarding whether the Appeal Authority is a person (i.e. a hearings officer or administrative law judge) or a board (i.e. a board of adjustment). In Taylorsville, the Appeal Authority is currently identified as the Board of Adjustment. City Code states that the Board of Adjustment will be made up of five regular members and two alternate members appointed by the Mayor with the advice and consent of the City Council. Members of the Board are required to be residents of the City and serve five-year terms. Appointments do not require any particular background, education, or experience.

- 7.1.2 An Appeal Authority has a “quasi-judicial” function, meaning that it conducts hearings, gathers evidence, and makes decisions in the general manner of courts. Established decision-making criteria for an Appeal Authority is very narrowly defined based on state law, city code, and case law. Consequently, understanding its’ role, responsibilities, and limitations are very important. Taylorsville’s current Board of Adjustment meets on an as-needed basis. Over the last several years, the Board of Adjustment has met very infrequently (last formal meeting being August 2011). The infrequent need for meetings has made it very difficult to maintain a regular training schedule and sustain a full board.
- 7.1.3 City Staff is recommending the appeal authority for Taylorsville be changed from a Board of Adjustment to a “Hearing Officer” who is trained and experienced in legal matters related to land use decisions. The Hearing Officer would be appointed by the Mayor with the advice and consent of the City Council. Staff feels the proposed text amendments would simplify the process for appeals and help ensure decisions based on applicable laws. **Commissioner Burggraaf** asked if this proposal had gone through legal review and **Mr. McGrath** said that it will before it goes before the City Council.

7.2 FINDINGS OF FACT:

- 7.2.1 Utah Code 10-9a-701 requires that every municipality adopting a land use ordinance establish one or more appeal authorities to hear and decide:
- Requests for variances from the terms of the land use ordinances;
 - Appeals from decisions applying the land use ordinances; and
 - Appeals from a fee charged in accordance with Section 10-9a-510.
- 7.2.2 The Appeal Authority has quasi-judicial responsibilities that require knowledge of City and State Code, legal processes, and land development.
- 7.2.3 Current Taylorsville Code identifies the Board of Adjustment as the City’s current Appeal Authority.
- 7.2.4 Current Taylorsville Code stipulates that the Board of Adjustment will be comprised of seven Taylorsville residents, including five regular members and two alternate members. Other than residency, there are no other requirements to serve on the Board.
- 7.2.5 The City has historically struggled to maintain a full Board of Adjustment based on the membership requirements of current code.
- 7.3 **STAFF RECOMMENDATION:** Staff recommends approval of the proposed changes.
- 7.4 **SPEAKING:** No one came forward to speak either in opposition or in favor, therefore, **Commissioner Warnas** closed the public hearing and opened the meeting for discussion by the Commission or a Motion.
- 7.6 **MOTION: Commissioner Quigley 9:08 – I will make a motion to forward a positive recommendation to the City Council for File #1Z18, Text Change to the Municipal Code regarding the Taylorsville Appeal Authority as presented by Staff.**
SECOND: Commissioner Morley
VOTE: Commissioner Barbieri – AYE, Commissioner Morley – AYE, Commissioner Quigley – AYE, Commissioner Peterson – AYE, Commissioner Burggraaf – AYE. Motion passes unanimously.

SUBDIVISION – PRELIMINARY PLAT

8. 11S17 – Consideration of a Preliminary Plat for Amending Xanadu Subdivision for Daveline Winter – 4718 and 4720 Cathay Circle. (Angela Price/Associate Planner). 9:09

- 8.1 **Ms. Price** presented this item saying that Daveline Winter is requesting consideration of a Preliminary Plat amending the Xanadu Subdivision. The property is located at 4718 and 4720 Cathay Circle and is approximately 0.15 acre. The applicant is requesting to subdivide two existing duplexes into two separate parcels.
- 8.1.1 In 2009, the applicant obtained a building permit to bring the duplexes into compliance with building code standards, with the intent of subdividing the duplexes into two separate dwelling units via a fire suppression wall. The structures were inspected by City Officials and the fire separation was approved. At that time, the applicant believed the property had been subdivided into two separate parcels. Unfortunately, there was an administrative error and the property was never subdivided and recorded with Salt Lake County. In December, the applicant listed the properties and learned that the subdivision had never occurred.
- 8.1.2 In 2009, the property was zoned R-2-6.5 and the duplexes met the zoning requirements for district. In 2012, the City adopted a new Zoning Map and Municipal Code which re-zoned all properties in the R-2-6.5 to R-2-8, making this property a legal non-conforming use.

8.1.3 After researching the project, it became apparent that the applicant had the intent to subdivide the property in 2009 under the old zoning requirements. The City is allowing the applicant to pursue the subdivision of the property under the pretense that an administrative error occurred in 2009 and the applicant's intent and understanding was the property was properly subdivided. The applicable code is based on when an applicant is made, which is the justification for utilizing the 2009 requirements.

8.2 **FINDINGS OF FACT:**

8.2.1 This application was initiated by Daveline Winter.

8.2.2 The property is zoned R-2-8.

8.2.3 The applicant is requesting Preliminary Plat approval for a two (2) lot subdivision.

8.2.4 The original subdivision application for this property was initiated in 2009.

8.2.5 The proposed plat meets the size and setback requirements for the R-2-6-5 zone in 2009, when the application was initiated.

8.2.6 The structures were inspected by City Officials in 2009 and the fire separation was approved.

8.4 **DISCUSSION:** Commissioner Burggraaf wanted clarification that the Commission is acting tonight on a 2009 application. He wondered what the circumstances were for the changes in zoning and Ms. Price said that it was her understanding that when the new Zoning Ordinance was written this was one of the zones that was consolidated into an R-2-8. Commissioner Burggraaf asked if that meant it was a grandfathered non-conforming use and structures for this area, to which Mr. McGrath replied that was correct. 9:16.

8.5 **STAFF RECOMMENDATION:** Staff recommends that the Planning Commission approves the Xanadu Preliminary Plat for a two (2) lot subdivision based on the Findings of Fact and the following conditions of approval: (1) The plat is recorded with Salt Lake County; (2) The signature on the plat matches the signature on the Title Report; (3) The final plat is compliant with all applicable codes and ordinances; (4) The applicant will comply with the requirements of all reviewing agencies.

8.6 **APPLICANT ADDRESS:** Daveline Winter was present and said that she currently lives at 4718 South Cathay Circle and is renting out the other side. That she has lived in that unit for about 19 years and was very proud of how well she has maintained the property both inside and out. Her goal was to split it into a twin home before she retired because she felt she would then want to move into a 55+ senior living property. In that endeavor she has purchased such a unit and is just waiting now to sell this home. She thought that everything had been taken care of years ago and has found a couple to buy her side of the twin home and will still rent out the other side. There will be a property management agency handling the rental property but she intended to still be actively involved in what is going on there.

8.7 **SPEAKING:** No one came forward, therefore, Commissioner Warnas closed the public hearing portion and opened the meeting up for Planning Commission discussion or a motion.

8.6 **MOTION:** Commissioner Barbieri – I will make a motion to move for approval of File #11S17 for the preliminary plat for amending the Xanadu Subdivision at 4718 and 4720 South Cathay Circle, based on the Findings of Fact and conditions of approval outlined in the Staff Report.

SECOND: Commissioner Peterson

VOTE: Commissioner Barbieri – AYE, Commissioner Morley – AYE, Commissioner Quigley – AYE, Commissioner Peterson – AYE, Commissioner Burggraaf – AYE. Motion passes unanimously.

CITY COUNCIL MEETING AND GENERAL DISCUSSION: Mr. McGrath advised that there were no planning items on the last City Council agenda.

ADJOURNMENT: The meeting was adjourned by motion of Commissioner Quigley at 9:22 p.m.

Respectfully submitted by:

Jean Gallegos, Admin Assistant/Recorder for the
Planning Commission

Approved in meeting held on March 13, 2018.